

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	4:04CR3006
)	
Plaintiff,)	MEMORANDUM
v.)	AND ORDER
)	
ANDRES CANCIO AQUIN,)	
)	
Defendant.)	

The defendant pleaded guilty to one count of conspiracy to distribute and possess with intent to distribute methamphetamine and, on January 24, 2005, was sentenced to 121 months' imprisonment. In a recent letter to the court, dated August 6, 2008 ([filing 39](#)), the defendant has made inquiry regarding the status of an appeal that the defendant allegedly filed on his own. Enclosed with the letter is a copy of a notice of appeal that the defendant purportedly mailed to the court on January 28, 2005 ([filing 38](#)).

In response to the defendant's inquiry, the court advises that the notice of appeal was not filed previously, and that the court has no record of having received the notice of appeal previously. Treating filings 38 and 39 as a motion for extension of time to file an appeal, the motion is denied as untimely. See [Fed.R.App.P. 4\(b\)\(4\)](#) (extension of time for appeal cannot exceed 30 days). To the extent that these filings seek other or different relief, they are also denied, with the court noting that the defendant entered into a plea agreement to receive a sentence of 121 months, which was binding upon the court once the plea agreement was accepted. See [Fed.R.Crim.P. 11\(c\)\(1\)\(C\)](#). Thus, the defendant has no legitimate basis for appealing his sentence.

In response to the clerk's inquiry as to whether the defendant is entitled to proceed in forma pauperis on appeal (filing 41), the court finds that the appeal is not

taken in good faith because the notice of appeal was not filed in a timely manner and it is without any apparent legal basis. Thus, the defendant may not proceed in forma pauperis. See [Fed.R.App.P. 24\(a\)\(3\)](#).

Accordingly,

IT IS ORDERED that:

1. The defendant's notice of appeal ([filings 38, 39](#)), treated as a motion, is denied.
2. The clerk of the court shall not process an appeal to the United States Court of Appeals for the Eighth Circuit on the basis of the aforesaid filings by the defendant.
3. Pursuant to [Fed.R.App.P. 24\(a\)\(3\)](#), the court hereby certifies that the defendant's appeal is not taken in good faith; the appeal is untimely and is without any apparent legal basis.
4. Pursuant to [Fed.R.App.P. 24\(a\)\(4\)](#), the clerk of the court shall forward a copy of this memorandum and order to the Clerk of the United States Court of Appeals for the Eighth Circuit.

August 18, 2008.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge